

[illegible]

Plaintiffs,

1:00-CV-0784

Defendants.

A decorative horizontal line composed of many small black diamonds arranged side-by-side.

Intervenors.

OF COUNSEL

DANIEL FRENCH, ESQ.

DONALD T. KINSELLA, ESQ.

PAUL R. WARE, JR., P.C.
ANTHONY S. FIOTTO, ESQ.
CHRISTOPHER D. MOORE, ESQ.
KAI W. LYMAN, ESQ.

<p>ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP 9 Thurlow Terrace Albany, New York 12203 and MACKENZIE HUGHES, LLP 101 South Salina Street P.O. Box 4967 Syracuse, New York 13221 Attorneys for Defendants Robert J. Congel, Woodchuck Hill Associates, Riesling Associates, Madeira Associates, Moselle Associates, and James Tuozzolo</p>	<p>MICHAEL J. CUNNINGHAM, ESQ.</p> <p>STEPHEN T. HELMER, ESQ.</p>
<p>WINSTON & STRAWN 1700 K Street, N.W. Washington, D.C. 20005 and DADD AND NELSON 11 Exchange Street P.O. Box 238 Attica, New York 14011 Attorneys for Defendants Pyramid Company of Onondaga and EklecCo</p>	<p>JAMES E. SHARP, ESQ. GORDON COFFEE, ESQ. KRISTA ENNS, ESQ.</p> <p>ERIC T. DADD, ESQ.</p>
<p>KING & SPALDING 1185 Avenue of the Americas New York, New York 10036 and KING & SPALDING 1730 Pennsylvania Avenue N.W. Washington, D.C. 20006 Attorneys for Defendants Marc A. Malfitano and Robert Brvenik</p>	<p>EDWARD G. KEHOE, ESQ.</p> <p>JOHN BRAY, ESQ. MICHAEL J. CIATTI, ESQ.</p>
<p>KIRKLAND & ELLIS 655 Fifteenth Street, N.W. Suite 1200 Washington, D.C. 20005 and COSTELLO, COONEY & FEARON, LLP Salina Place, 205 South Salina Street Syracuse, New York 13202 Attorneys for Defendant Scott R. Congel</p>	<p>JAMES P. GILLESPIE, ESQ. REBECCA R. ANZIDEI, ESQ.</p> <p>EDWARD G. MELVIN, ESQ. ROBERT SMITH, ESQ.</p>
<p>HISCOCK, BARCLAY LAW FIRM Fifth Floor 50 Beaver Street Albany, New York 12207-2830 Attorneys for Intervenor</p>	<p>MICHAEL J. GRYGIEL, ESQ.</p>

Hon. Norman A. Mordue, Chief U.S. District Judge

MEMORANDUM-DECISION AND ORDER

Defendants move (Dkt. No. 495) for reconsideration of so much of the Court's Memorandum-Decision and Order dated March 31, 2006 (Dkt. No. 482) as denied summary judgment dismissing plaintiffs' claim under 18 U.S.C. § 1962(a) with respect to S&R and denied summary judgment dismissing plaintiffs' claim under 18 U.S.C. § 1962(c) with respect to all defendants. Defendants contend that reconsideration is warranted by the decision by the United States Supreme Court in *Anza v. Ideal Steel Supply Corp.*, ___ U.S. ___, 126 S.Ct. 1991 (2006), reversing the Second Circuit's decision in *Ideal Steel Supply Corp. v. Anza*, 373 F.3d 251 (2d Cir. 2004). Plaintiffs oppose the motion (Dkt. No. 508).

The Supreme Court decided *Anza* on June 5, 2006. On July 9, 2006, the case at bar was deemed trial ready. The docket reflects communications among the Court and counsel throughout the rest of the month of June regarding a trial date and a schedule for pretrial submissions. Under the circumstances in this case, defendants' motion, filed July 31, 2006 – 56 days after the *Anza* decision and 33 days after the final trial date was set – was not made within a reasonable time as required by Fed. R. Civ. P. 60(b). Reconsideration is denied on the ground of untimeliness.

In any event, even if the Court were to address the merits of the motion, it would deny reconsideration. In its March 31, 2006 Memorandum-Decision and Order, this Court did not rely on the reasoning of the Second Circuit in *Anza*.¹ Nor does the Supreme Court's decision in *Anza* and its discussion of *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992), materially alter the law as applied by this Court in the instant case. This Court expressly applied the *Holmes* standard in requiring record evidence of "a direct relation between the injury asserted

1

This Court's sole citation to the Second Circuit's *Anza* holding in the March 31, 2006 decision was a "*see generally*" citation in the context of the denial of S&R's request for summary judgment on plaintiffs' section 1962(a) claim.

and the injurious conduct alleged.” While the Court might have worded its discussion somewhat differently if it had had the benefit of the *Anza* decision, this Court’s essential findings, analysis, and holding are not affected by *Anza*. Nothing in the Supreme Court’s *Anza* decision constitutes an intervening change in controlling law warranting reconsideration.

It is therefore

ORDERED that the defendants’ motion for reconsideration (Dkt. No. 485) is denied.

IT IS SO ORDERED.
September 14, 2006
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge

N

A

M